

March 17, 2010

PUBLIC UTILITIES
COMMISSION

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HAND DELIVER

The Honorable Chairman and Members of the
Hawaii Public Utilities Commission
465 South King Street
Kekuanaoa Building, Room 103
Honolulu, HI 96813
Attention: Michael Azama, Esq.

RE: Docket No. 2009-0048 - In the Matter of the Application of Molokai Public Utilities, Inc. ("MPU"), for review and approval of rate increases; revised rate schedules; and revised rules: Responses to County of Maui's and West Molokai Association's Statement of Probable Entitlement

Dear Chairman, Commissioners and Commission Staff:

Pursuant to the Stipulated Regulatory Schedule (Exhibit "A") contained in the Order Approving Proposed Procedural Order, as Modified, filed on November 6, 2009, MPU hereby submits its Responses to the Statements of Probable Entitlement filed by the County of Maui and West Molokai Association on March 10, 2010.

Hawaii Revised Statutes ("HRS") § 269-16(d), in pertinent part, states:

Notwithstanding subsection (c), if the commission has not issued its final decision on a public utility's rate application within the nine-month period stated in this section, the commission shall within one month after the expiration of the nine-month period render an interim decision allowing the increase in rates, fares and charges, if any, to which the commission, based on the evidentiary record before it, believes the public utility is probably entitled. [Emphasis added.]

Response to County's Statement of Probable Entitlement

In its Statement of Probable Entitlement, filed on March 10, 2010, the County of Maui ("County") argues that MPU "is not entitled to the rate increases requested," but fails to state what the County believes that MPU is probably entitled to based on the evidentiary record to date. The purpose for statements of probable entitlement at this stage of the process is to assist the Commission in determining interim rates for the utility based on the evidentiary record currently before it in the event the Commission is unable to render a final decision within the statutory time period.

The Statement of Probable Entitlement filed by the County iterates what the County believes are issues or items on which MPU has not yet met its burden of proof. Instead of setting forth the extent to which the County believes MPU has met its burden of proof, and,

therefore what MPU is probably entitled to, the County merely states that "an evidentiary hearing is necessary to fully develop the record and vet these issues[.]" The County's letter does not constitute a statement of probable entitlement and is unhelpful for this purpose.

Moreover, in violation of the Stipulated Prehearing Order, the County attempts to introduce evidence through its Statement of Probable Entitlement instead of through the information request process or direct testimony. The County's Exhibit A, which was attached to its Statement of Probable Entitlement, as well as numerous averments made therein regarding Molokai Properties, Limited and the design of the MPU system are not in the evidentiary record to date. This is especially disturbing, given the fact that the County elected to not submit any direct testimony or exhibits. See County of Maui's Statement Regarding Direct Testimony, filed on January 13, 2010.

Based on the foregoing, MPU requests that the Commission disregard the County of Maui's Statement of Probable Entitlement, filed on March 10, 2010.

Response to WMA's Statement of Probable Entitlement

With regard to the West Molokai Association's ("WMA") Statement of Probable Entitlement, WMA has chosen to deviate from the position it took in its Direct Testimony filed on January 6, 2010. As part of its Direct Testimony, WMA filed Exhibit WMA 101. Under this exhibit, WMA proposed that MPU was entitled to a test year revenue requirement of \$878,018, or an increase of \$438,180 over present rates. Included in the calculation of the test year revenue requirement was \$92,479 in depreciation and an operating income of \$20,072.

In WMA's Statement of Probable Entitlement, WMA now increases the revenue requirement by \$40,000 with no explanation except for a footnote to its Table No. 1. In addition, WMA again, with no further explanation or justification supported by the evidentiary record, removes the \$92,479 in depreciation and an operating income amount of \$60,789. Following these unexplained reductions, WMA then states that the "revenue requirement for MPUI for the test year on a break-even cash basis is \$764,750". Because the amount is approximately \$4,600 more than the MPU's estimate of the calculated revenues it is receiving under the temporary rates approved by the Commission in Docket No. 2008-0115, the difference is "de minimis" and MPU's existing temporary rates should remain in place until a final decision is rendered.¹

It is quite apparent that by eliminating the depreciation and operating income amounts it previously supported in its direct testimony, WMA has "cherry picked" arguments made by the Consumer Advocate in its Direct Testimony in order to reduce the amount of probable entitlement. Nothing in WMA's prior submittals in this proceeding support such adjustments. Such "cherry picking" is improper and WMA's Statement of Probable Entitlement should also be disregarded by the Commission.

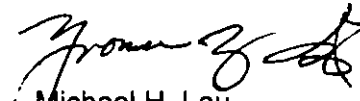
¹ WMA Statement of Probable Entitlement, at p. 2.

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Conclusion

MPU appreciates the opportunity to provide its responses to the County's and WMA's Statement of Probable Entitlement and urges the Commission to adopt the amounts set forth in MPU's Statement of Probable Entitlement.

Very truly yours,



Michael H. Lau
Yvonne Y. Izu

Morihara Lau & Fong LLP
Attorneys for Molokai Public Utilities, Inc.

cc: Consumer Advocate
Jeanette Castagnetti, Esq. (COM)
William W. Milks, Esq. (WMA)
Andrew V. Beaman, Esq. (MPL)